

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 CLAUDIA H. PHILLIPS, State Bar No. 202645
Deputy Attorney General
4 1515 Clay Street, 20th Floor
P.O. Box 70550
5 Oakland, CA 94612-0550
Telephone: (510) 622-2221
6 Facsimile: (510) 622-2270

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2009-111

12 **CHERI MERCER LEE**
820 Park Row #534
13 Salinas, California 93901

A C C U S A T I O N

14 Registered Nurse License No. 518525

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about January 3, 1996, the Board of Registered Nursing issued
23 Registered Nurse License Number 518525 to Cheri Mercer Lee (Respondent). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on September 30, 2009, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board of Registered Nursing
28 (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 STATUTORY PROVISIONS

3 4. Section 2750 of the Code provides, in pertinent part, that the Board may
4 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
5 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of
7 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
8 against the licensee or to render a decision imposing discipline on the license. Under section
9 2811(b) of the Code, the Board may renew an expired license at any time within eight years after
10 the expiration.

11 6. Section 2761 of the Code states, in pertinent part:

12 "The board may take disciplinary action against a certified or licensed nurse or
13 deny an application for a certificate or license for any of the following:

14 "(a) Unprofessional conduct....

15 ...

16 "(f) Conviction of a felony or of any offense substantially related to the
17 qualifications, functions, and duties of a registered nurse, in which event the record of the
18 conviction shall be conclusive evidence thereof."

19 7. Section 2762 of the Code states, in pertinent part:

20 "In addition to other acts constituting unprofessional conduct within the meaning
21 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed
22 under this chapter to do any of the following:

23 ...

24 "(b) Use any controlled substance as defined in Division 10 (commencing with
25 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
26 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
27 injurious to himself or herself, any other person, or the public or to the extent that such use
28 impairs his or her ability to conduct with safety to the public the practice authorized by his or her

1 license.

2 "(c) Be convicted of a criminal offense involving the prescription, consumption,
3 or self-administration of any of the substances described in subdivisions (a) and (b) of this
4 section, or the possession of, or falsification of a record pertaining to, the substances described in
5 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
6 thereof."

7 8. Section 490 of the Code provides, in pertinent part, that a board may
8 suspend or revoke a license on the ground that the licensee has been convicted of a crime
9 substantially related to the qualifications, functions, or duties of the business or profession for
10 which the license was issued.

11 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
12 request the administrative law judge to direct a licensee found to have committed a violation or
13 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
14 and enforcement of the case.

15 10. California Code of Regulations, Title 16, section 1444, states, in pertinent
16 part:

17 "A conviction or act shall be considered to be substantially related to the
18 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
19 present or potential unfitness of a registered nurse to practice in a manner consistent with the
20 public health, safety, or welfare."

21 FIRST CAUSE FOR DISCIPLINE

22 (Conviction of Substantially Related Crime)

23 11. Respondent is subject to disciplinary action under Code sections 2761(f)
24 and 490 in that she was convicted of a crime substantially related to the duties, qualifications and
25 functions of a registered nurse, as defined in Title 16, California Code of Regulations section
26 1444. The circumstances are set forth in paragraphs 12 and 13, below.

27 12. On or about October 31, 2006, in *People v. Cheri Mercer Lee*, Monterey
28 County Superior Court Case No. MS247874A, Respondent was convicted by a plea of no contest

1 of violating Vehicle Code section 23152(b)–Driving While Having a .08% or Higher Blood
2 Alcohol. Imposition of sentence was suspended and Respondent was placed on five years of
3 conditional probation. The offense occurred while Respondent was driving on SR-156 on July
4 24, 2006.

5 13. On or about July 1, 2008, in *People v. Cheri Mercer Lee*, Mendocino
6 County Superior Court Case No. MCTMCRT-08-0083482-001, Respondent was convicted by
7 a plea of no contest of violating Vehicle Code section 23152(b)–Driving While Having a .08% or
8 Higher Blood Alcohol. On or about July 15, 2008, imposition of judgment was suspended and
9 Respondent was placed on 60 months of summary probation. The offense occurred in
10 Fort Bragg on or about March 21, 2008.

11 SECOND CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct: Use of Alcohol in Dangerous Manner)

13 14. Respondent is subject to disciplinary action under Code sections 2761(a)
14 and 2762(b) in that she engaged in unprofessional conduct by using alcohol in a dangerous
15 manner. The circumstances are set forth in paragraphs 12 and 13, above.

16 THIRD CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct: Conviction of Crime Involving Use of Alcohol)

18 15. Respondent is subject to disciplinary action under Code sections 2761(a)
19 and 2762(c) in that she was convicted of a crime involving the consumption of alcohol. The
20 circumstances are set forth in paragraphs 12 and 13, above.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

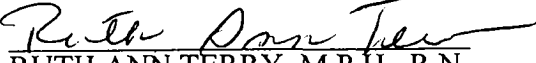
24 1. Revoking or suspending Registered Nurse License Number 518525, issued
25 to Cheri Mercer Lee;

26 2. Ordering Cheri Mercer Lee to pay the Board of Registered Nursing the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: 11/17/08


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2008402511